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SUBJECT: INDIAN AUTHORITIES CONTINUE TO DETAIN INDEFINITELY HUMAN RIGHTS ADVOCATE IROM SHARMILA

11. (SBU) Summary: On May 11 Manipuri human rights activist Irom Sharmila was summoned to New Delhi to face charges of attempted suicide stemming from her six-year hunger strike against the Armed Forces Special Powers Act (AFSPA). Sharmila has been protesting the continued human rights violations committed by the India armed forces under the AFSPA. Normally based in Manipur, she had taken her protest to New Delhi in October 2006 and remained there until March 2007. Returning to Manipur on March 6, she was taken into judicial custody pending the charges of attempted suicide filed in the New Delhi courts. The AFSPA permits security forces to "shoot to kill" any suspects with impunity and has facilitated serious human rights abuses, including extrajudicial killings, "disappearance," rape and torture by granting sweeping powers to the security forces in "disturbed" areas of large parts of Northeast India. Human rights activists allege that hundreds have been killed, mutilated and women raped in "militarized" Manipur under the cover of this law since its inception in 1958.

12. (SBU) Summary Continued: In November 2004, the Justice Jeevan Reddy Committee conducted a review of the act following protests over the rape and killing of Thangjam Manorama by the Assam Rifles in Manipur. The Committee's recommendations included repeal of the act and inclusion of new provisions in the existing Unlawful Activities (Prevention) Act (ULPA) to maintain a balance between counter-insurgency efforts and the protection of human rights. The recommendations were not accepted by the Central government. As Sharmila's detention indicates, officials continue to deny the protection of fundamental human rights in the Northeast, and can do so because the region remains outside of the national and international consciousness. Such a policy, however, undermines long-term prospects for peace and security in the region. End Summary.

Irom Sharmila's 6-year Hunger Strike

13. (U) Irom Sharmila, selected for the South Korean Gwangju

Prize for Human Rights on May 2, has been on a hunger strike for more than six years to protest human rights abuses in Manipur and to demand the repeal of the draconian AFSPA. Sharmila began her fast on November 2, 2000 following the killing of 10 civilians at Malom, near the state capital of Imphal, by Assam Rifles personnel acting under the authority of the AFSPA. She has been arrested, hospitalized and force fed through nasal tubes for much of the past six years. Sharmila has been in judicial custody for the punishable offense of attempt to commit suicide under Section 309 of the Indian Penal Code (IPC). Sharmila's hospital room where she is confined in Imphal is treated as an extension of the state prison. Every year a new First Information Report (FIR) is filed against her, because legally she cannot be detained for her offense for more than a year and should be released. The state police have not filed formal charges against her.

¶4. (U) On October 4, 2006, the day after she was released and before the state could file another FIR, Sharmila went to New Delhi to continue her hunger-strike and to conduct her protest in the national capital. New Delhi police immediately arrested her under Section 309 of the IPC and kept her under police custody. She was admitted to hospital due to her deteriorating health. Following an appeal by Sharmila's lawyers, New Delhi High Court passed an order allowing her to return to Manipur if her health permitted. On March 6, Sharmila returned to Manipur and was rearrested and hospitalized. Meanwhile, Delhi police filed a charge-sheet on her case and submitted a report to the court. Summoned back to New Delhi, Sharmila appeared before the Additional Chief Metropolitan Magistrate on May 11. She was released on bail and the New Delhi court directed that she may have to appear again as required. On May 13, Sharmila returned to Imphal and continues to be held under detention by the Manipur police in a secure ward of the government hospital.

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¶5. (SBU) Sharmila said she returned to Imphal with the hope that the AFSPA would be repealed, as was assured by a number of state political leaders prior to the state assembly elections in February. However on March 19, a resolution by opposition legislators urging the GOI to repeal the act was defeated in the Manipur Assembly. Congress Chief Minister Okram Ibobi Singh told the Assembly that due to the deteriorating law and order situation the state, the Manipur government had to retain the act and did so with the support of the Central government. He said the AFSPA would be repealed if the situation in Manipur improved, and reiterated that the state government alone could not tackle the insurgency problem.

The AFSPA -- Killings, Rape, Torture, and Illegal Detention

¶6. (SBU) The AFSPA, a law utilized in "disturbed areas," including large parts of Northeast India and Kashmir, has facilitated serious human rights abuses, including extrajudicial executions, disappearances, rape and torture, by granting the security forces sweeping powers. The AFSPA permits security forces to make warrantless arrests and gives them authorization to shoot to kill even when members of the security forces are not in danger. One of the chief complaints against the AFSPA is that it allows security forces to act with impunity as no person can initiate legal proceedings against members of the armed forces for actions taken under the AFSPA without first receiving permission from the Central Government.

¶7. (SBU) The AFSPA has its roots in a British colonial ordinance, called the Armed Forces (Special Powers) Ordinance promulgated in 1942 to suppress the "Quit India Movement." The act itself began as the Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958 that came into force in May 1958, and was

passed by Parliament in September that year. The act remains in force for one year and is renewed annually. In 1972, the AFSPA was amended to confer the power to declare an area as "disturbed" to the Governor, who represents the Center in each state (this power was previously vested in the state government) and permits lower enlisted, rather than just officers, the authority to decide on the use of deadly force. The amendment also extended the AFSPA to other states in the Northeast. The same law was introduced in Jammu and Kashmir in December 1990.

18. (SBU) According to the AFSPA, "if the Governor is of the opinion that the whole or any part of the State of Assam or the Union Territory of Manipur, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil powers is necessary, he may, by notification in the Official Gazette, declare the whole or any part of the State or Union territory to be a disturbed area.

"Any commissioned officer, warrant officer, non commissioned officer or any other person of equivalent rank in the Armed Forces may, in a disturbed area,

(a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;

(b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or

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absconders wanted for any offence;

(c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;

(d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and may for that purpose use such force as may be necessary.

"Any person arrested and taken into custody under this act shall be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest. No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act."

19. (SBU) The AFSPA has had a significant negative impact on the human rights situation in Manipur. Human rights activists claim that hundreds have been killed, mutilated and raped in Manipur under cover of the AFSPA. In 2007 alone, there have already been a number of alleged human rights violations as compiled by the Manipur based NGO Human Rights Alert:

-- On January 31, four male villagers were digging in the church campus of Khoken village. Ten village girls were helping remove the dirt. Two Assam Rifles personnel entered the campus and opened fire without warning, on suspicion that the villagers were insurgents. Three villagers were injured. Subsequently, additional Assam Rifles personnel came to the church campus and took the injured villagers to Imphal. Villager Henpu Singsit, who had been shot in the chest, died on the way to the hospital.

-- On February 2, an "encounter" took place between the Indian Border Security Force (BSF) at Mayai Leikai, Heirok and cadres of the proscribed People's Liberation Army (PLA). The BSF entered the house of Wairokpam Ibosana the next day and forced the family and neighbors to sit outside for questioning. Ibosana was singled out and accused of sheltering underground PLA cadres. He was beaten severely and taken to the BSF camp and later handed to the local police.

-- On February 8, Ashangbam Shyamchand and his friends were shot at by police commandos while they were shopping at Lamlai Bazar. Shyamchand was killed and 14 local youths were picked up from the area by police commandos and detained in custody.

-- On March 13, Nengneikim Haokip was attacked by a soldier while she was washing clothes at a spring and raped after she lost consciousness. She later lodged a complaint at an Assam Rifles post at Kotlien. The next day, villagers captured the accused soldier, but he fled to the Assam Rifles post. Approximately 200 women surrounded the post demanding the rapist be handed over to them. Security personnel attacked and beat the protestors.

-- March 25-26, Assam Rifles personnel entered the house of Elangbam Dhanabir and assaulted him. He was taken away without an arrest warrant. Later, he was handed over to the Thoubal Police Station and charged with being a member of the United National Liberation Front (UNLF).

-- On April 6, three youths riding a motorcycle were chased and shot at by a police paramilitary team on duty at Kwakeithel market, presumably on suspicion that they were insurgents. When local women rushed towards the victims, the police fired blanks to disperse them. Later, police issued a statement that the three youths were killed in self defense as they had thrown hand grenades at the police pursuing them. A citizen's Joint Action Committee submitted a memorandum to the Chief Minister demanding a judicial inquiry, termination of the services of the

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commandos, and compensatory payment to the victims' families.

A Failed Challenge and Demands for Repeal

¶10. (SBU) In November 1997, in response to a legal challenge to the AFSPA, the Supreme Court upheld the constitutional validity of the AFSPA. The court ruled that the powers given to the army were not "arbitrary" or "unreasonable" and that they did not violate the provisions of the Indian Constitution. However, it ruled that the declaration of an area as "disturbed" should be reviewed every six months. On the subject of "prosecution, suit or other legal proceeding" of army personnel subject to "sanction" of government permission, the court noted, "We are of the view that since the order of the central government refusing or granting the sanction . . . is subject to judicial review, the central government shall pass an order giving reasons." The court also ruled that safeguards in the form of a list of "Dos & Don'ts" for security forces are legally binding.

¶11. (SBU) For decades, human rights groups and women's organizations in Northeast India protested the continuing human rights abuses and demanded that the AFSPA be repealed. These protests increased following the July 2004 sexual assault and death in custody of Thangjam Manorama in Manipur. The outrage resulting from Manorama's killing was channeled through a coalition of 32 civil society organizations in Manipur called the Apunba Lup, and manifested itself in "naked protests" by Manipuri women rallying disrobed in public and self-immolation by some youths. The Act was withdrawn from the limited area of the Imphal municipal district as a result.

¶12. (SBU) Buoyed by their success, human rights activists nationwide began calling for the AFSPA's general repeal on the grounds that it violated international standards on human rights. Further, they alleged that there had been an inadequate debate in Parliament when the act was initially introduced. These protests lead to the creation of the Justice Jeevan Reddy Committee to review the AFSPA.

The Justice Jeevan Reddy Committee Report

¶13. (SBU) In November 2004, the Center appointed the five-member Justice Jeevan Reddy Committee to review the provisions and application of the AFSPA. The Committee held hearings and invited comments from individuals, organizations, institutions and non-governmental organizations. The Committee's report pointed out that although it is the government's duty to protect the nation from internal disturbance, the Central Government had an obligation to respect the "fundamental rights guaranteed by the Constitution." Significantly, the Committee's report recommended the repeal of the AFSPA, saying it was "a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness. It may be necessary for the army to remain while the act should go, and therefore an appropriate legal mechanism has to be devised to ensure protection of rights."

¶14. (SBU) The Committee recommended insertion of appropriate provisions into the existing Unlawful Activities (Prevention) Act (ULPA), 1967 (amended in 2004) as a replacement for the AFSPA, noting that, "The ULPA defines "terrorism" in terms which encompass and cover the activities of insurgent organizations in the Northeast. It is designed to ban unlawful organizations, curb terrorist activities and the funding of terrorism, as well as investigation, trial and punishment of persons indulging in terrorist acts. After the proposed amendments, ULPA would be more comprehensive and ensure that persons apprehended by the armed forces would be handed over immediately to the nearest

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police station and would be tried in accordance with the procedural laws."

¶15. (SBU) Because the ULPA does not contain any provision specifying the powers, duties and procedures relevant to deployment of armed forces, the Committee recommended creation of a "Grievances Cell" as a mechanism for ensuring accountability of the armed forces, and noted that "There have been a large number of "disappearances" without warrants and deaths and injuries. Information should be provided on the whereabouts of missing persons within 24 hours." The Committee also recommended specific time and jurisdictional limits on armed forces presence and operations that could be reviewed and renewed periodically. All of these changes could have been done by amendment to the existing ULPA law.

¶16. (SBU) COMMENT: The fact that Indian officials can detain award-winning human rights advocate Sharmila indefinitely, with no reaction from the international community, is an indication of how the deplorable human rights situation in India's Northeast is hidden from general awareness. The perpetuation of the AFSPA, even when found by the Reddy Commission to violate the "fundamental rights guaranteed by the [Indian] Constitution," also demonstrates the lack of serious debate about the AFSPA and lack of commitment by the GOI to protecting basic human rights in Manipur and the region. Ironically, the AFSPA's purported justification, of preserving security in the Manipur, is actually undermined by its indiscriminate use. The enforcement of the AFSPA over five decades has failed to curb insurgency in the Northeast and has instead intensified local feelings of alienation and discrimination in the affected areas. Insurgent groups in the region have been able to capitalize on this popular discontent to further their own goals, including

criminal activities such as extortion and kidnapping, knowing that the populace does not trust the security forces. The GOI should repeal the AFSPA not just in the interest of retaining its pretense of being concerned about basic human rights but also in the interest of effectively responding to the insurgencies fueled by the resentment of AFSPA abuses.

JARDINE